

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TODD ENDER, JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DEBRA ENDER,

Respondent-Appellant,

and

STEVEN DURHAM and TODD ENDER, SR.,

Respondents.

In the Matter of TIFFANY ENDER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DEBRA ENDER,

Respondent-Appellant,

and

STEVEN DURHAM and TODD ENDER, SR.,

Respondents.

UNPUBLISHED

April 12, 2007

No. 273303

Kent Circuit Court

Family Division

LC No. 05-052877-NA

No. 273304

LC No. 05-052878-NA

In the Matter of STEVEN ENDER-DURHAM,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

No. 273305
LC No. 05-052879-NA

DEBRA ENDER,

Respondent-Appellant,

and

STEVEN DURHAM and TODD ENDER, SR.,

Respondents.

In the Matter of STEVEN ENDER-DURHAM,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

No. 273311
LC No. 05-052879-NA

STEVEN DURHAM,

Respondent-Appellant,

and

DEBRA ENDER,

Respondent.

Before: Wilder, P.J., and Sawyer and Davis, JJ.

PER CURIAM.

In these consolidated appeals, respondents Debra Ender and Steven Durham appeal as of right from the trial court's order terminating their parental rights to Steven Ender-Durham (Steven), and terminating respondent mother's parental rights to Tiffany Ender (Tiffany) and Todd Ender, Jr. (Todd), pursuant to MCL 712A.19b(3)(c)(i) and (ii), (g), (j) and (n)(i).¹ We affirm.

On appeal, respondent mother challenges the sufficiency of the evidence to establish a statutory ground for termination of her parental rights. In order to terminate parental rights, the trial court must find at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review the trial court's decision for clear error. *Id.* at 356-357; MCR 3.977(J). We conclude that the trial court did not clearly err by finding that the statutory grounds for termination of respondent mother's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The primary conditions of adjudication were the physical abuse of Todd, by both appellants, as well as deficiency in parenting skills evidenced by respondent mother's lack of concern about the physical abuse of Todd, and by her failure to benefit from Early Impact and Advanced Impact services. The evidence amply showed that the core condition of adjudication, inadequate parenting skills, continued to exist at the time of the termination trial. Respondent mother's therapist, Renee Douglas, who continued to see respondent mother at the time of the termination trial, testified that respondent mother was struggling to see the seriousness of the allegations and to understand why the children were in foster care. Respondent mother failed to acknowledge the sexual abuse upon Tiffany by respondent Durham, which was disclosed during these proceedings, and has not indicated that she believes Tiffany's disclosures, despite respondent Durham's conviction by plea of second-degree criminal sexual conduct. Although respondent mother participated in three parenting classes, foster care worker Carrey Curell did not observe respondent mother develop an ability to apply what was taught. Respondent mother's interactions with the children during visits were observed to be inappropriate. Even taking into consideration the favorable testimony of Linda Brauer, we cannot conclude that the trial court clearly erred in finding that the deficiencies in respondent mother's parenting skills had not been remedied and continued to exist.

The trial court also did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be remedied within a reasonable time considering the ages of the children. Respondent mother has received services in each year from 1997 through 2000, in 2003, and from November 2004 until the filing of the petition in July 2005. During the course of these proceedings, she received counseling services for 12 sessions, and three parenting courses. Respondent mother's contention that her compliance with the parent-agency agreement is incompatible with termination is incorrect. This Court has made clear that a parent must do more than physically comply with the service plan; "a parent must benefit from the

¹ Only respondent Durham's parental rights were terminated under § 19b(3)(n)(i). His sole contention on appeal is that the trial court erred in its best interest determination, MCL 712A.19b(5).

services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Yet, according to her current counselor, respondent mother continued to deny the sexual abuse of Tiffany and failed to understand the reasons for the children coming in care, reflecting a severe cognitive impairment that would interfere with respondent mother's ability to protect the children. Given the poor prognosis for respondent mother's ability to effectively parent the children, the severity of respondent mother's cognitive impairment, and her demonstrated difficulty with recognizing the needs of the children, the trial court did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i).

Respondent mother also contends on appeal that termination was improper because she was not provided with adequate services directed toward reunification of the family. In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), and (4). The reasonableness of the services provided is relevant in determining whether statutory grounds for termination have been established by clear and convincing evidence. See *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991). In this case, the agency made an initial referral for counseling in September 2005, but the termination of a contract made this service unavailable. Respondent mother then sought counseling on her own initiative, but services were again unavailable through the particular provider because of funding issues. Respondent mother received another referral that resulted in five monthly counseling sessions beginning in February 2006. Respondent mother then located a counselor who provided her seven sessions on a weekly or biweekly basis. Respondent mother also received a general parenting class, a specialized parenting class geared to children with ADD, and on her own initiative undertook and completed a third class essentially duplicative of the first. She received individualized attention from the instructor of the second class, Linda Brauer, who spoke with her at length for 30 minutes before each class and after class as well. We conclude that these are at least minimally reasonable efforts, and the trial court did not clearly err by determining that reasonable efforts toward reunification were made.

The trial court also did not clearly err by finding that a new condition arose causing the child to come within the court's jurisdiction, that respondent mother received recommendations to rectify the condition but failed to do so after receiving notice and a hearing and an opportunity to rectify the condition, and that there was no reasonable likelihood that she would be able to do so within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(ii). The new condition that caused the children to come within the court's jurisdiction was Tiffany's disclosure of sexual abuse by respondent Durham. This condition arose subsequent to the initial disposition, but before the two review hearings and permanency planning hearing that took place below. Respondent mother was advised of the allegations and of respondent Durham's admission to touching Tiffany. Respondent mother received recommendations to rectify the condition, including that she address the issue of sexual abuse, and that she engage in counseling and parenting classes. Respondent mother did not address the issue of sexual abuse, and in spite of respondent Durham's plea to second-degree criminal sexual conduct, continued to deny that Tiffany was sexually abused, or at best to indicate that she did not know what happened but would have to assume it was true. The evidence further demonstrated that there was no

reasonable likelihood that respondent mother would rectify this condition within a reasonable time considering the ages of the children. As we have already noted, respondent mother's prognosis for being able to effectively parent the children is poor, and her difficulty in understanding the seriousness of the issues in this case or even the reasons for the children coming into care demonstrate a severe cognitive limitation that is likely to interfere with her ability to protect the children in the future. We are not left with the impression that the trial court made a mistake by terminating respondent mother's parental rights pursuant to MCL 712A.19b(3)(c)(ii).

Termination was also appropriate pursuant to MCL 712A.19b(3)(g) and (j). Respondent mother failed to provide proper care and custody for the children by physically abusing and allowing abuse of Todd, and by failing to acknowledge the sexual abuse of Tiffany. The same evidence establishing that there is no reasonable likelihood of respondent mother rectifying the barriers to reunification, equally demonstrates that there is no reasonable likelihood that she will be able to provide proper care and custody for the children within a reasonable time considering their ages, MCL 712A.19b(3)(g), and that there is a reasonable likelihood that the children would be harmed if returned to her care, MCL 712A.19b(3)(j).

The trial court did not clearly err by finding that termination of respondent mother's parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Two of the children have significant special needs. Todd has been diagnosed as ADHD, ODD, cognitively and emotionally impaired, and otherwise health impaired. At the outset of the case, Todd was nearly 14 years old, but at a third-grade cognitive level. Tiffany, then age 11, was also near a third-grade cognitive level. Foster care worker Carrey Curell noted that the children are on a lower communicative level and need emotional nurturance that respondent mother lacks the ability to provide. Curell did not see that the children were bonded with respondent mother. Tiffany and Todd remain in the care of their paternal grandparents, who are willing to pursue guardianship of the children if necessary.² This record presents no basis to conclude that the termination of respondent mother's parental rights to Todd and Tiffany was clearly contrary to their best interests.

Curell testified that the behaviors of Steven, now age six, have improved since visits with respondent mother were stopped. Steven's therapist indicates that his behavior is consistent with that of a child who has experienced early childhood trauma. According to his therapist, his most prominent needs are in the areas of stability, consistency, and structure. Respondent mother struggles with emotional instability, and never demonstrated the ability to control her emotions, becoming upset with the agency and caregivers, a number of times in front of the children and on one occasion causing Steven to cower against a wall. Although there was evidence of a bond between respondent mother and Steven, as well as concern for him on her part that was not expressed regarding the older children, her inability to understand the reasons the children came into care clearly demonstrates her inability to effectively protect and parent Steven. We are not

² The termination order provided that TE and TE, Jr., remain temporary court wards. At the time of the termination trial, their father, Todd Ender, Sr., was participating in services pursuant to a parent-agency agreement.

left with a definite or firm impression that the trial court made a mistake by finding that termination of respondent mother's parental rights was in SE's best interests. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Finally, the trial court did not clearly err by finding that termination of respondent Durham's parental rights was in Steven's best interests. Respondent Durham pleaded guilty to second-degree criminal sexual conduct in connection with conduct against Steven's sibling, Tiffany. Although he had registered for sexual offender treatment at the time of the termination trial, he acknowledged that he probably would not be safe around children for a long time. Given this evidence, we are left with no impression that the trial court made a mistake by finding that termination of respondent Durham's parental rights was in Steven's best interests.

Affirmed.

/s/ Kurtis T. Wilder

/s/ David H. Sawyer

/s/ Alton T. Davis